

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of the Petition of Autotel pursuant to)
Section 252(e)(5) of the Communications Act for)
Preemption of the Jurisdiction of the Public Utilities) WC Docket
No. 07-240
Commission of Nevada Regarding Enforcement of)
Interconnection Agreement with Embarq (formerly)
Central Telephone of Nevada d/b/a Sprint of Nevada.)

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF NEVADA

On October 18, 2007, Autotel filed this latest in its series of petitions for preemption by the Federal Communications Commission ("FCC") of the jurisdiction of various western states' regulatory commissions. The Public Utilities Commission of Nevada ("PUCN") respectfully submits these comments in opposition to Autotel's Petition in this docket.

Autotel's filing of this action is much more than frivolous. It is a deliberate, continuing abuse of process and part of a repetitive pattern of serial, forum-shopping federal lawsuits and FCC preemption petitions tying up judicial and agency resources in frustration with and/or retaliation for unfavorable arbitration decisions by state regulatory commissions. Autotel and its sister company Western Radio Services Co. ("WRSC"), both owned and operated by Richard L. Oberdorfer, have filed nearly identical lawsuits in the western states and petitions for FCC preemption of those state's regulatory commissions. Autotel has not prevailed in any of these actions.

AUTOTEL'S PREVIOUS PREEMPTION PETITIONS:

The current petition is Autotel's second request for preemption by the FCC of PUCN jurisdiction in the last three years. In addition, Autotel has filed at least six virtually identical petitions for preemption by the FCC of other state regulators' jurisdiction in the last three years. Autotel's previous preemption petitions include:

WC Docket No. 04-311, Petition for Preemption of the jurisdiction of PUCN re arbitration of Interconnection Agreement between Autotel and Nevada Bell Telephone Company d/b/a SBC Nevada, filed July 30, 2004; Petition denied October 22, 2004.

WC Docket No. 06-134, five separate Petitions for Preemption of the jurisdiction of Arizona Corporation Commission, Colorado Public Utilities Commission, New Mexico Public Regulation Commission, Oregon Public Utility Commission and Utah Public Service Commission, all re arbitration of Interconnection Agreements between Autotel or its affiliate Western Radio Services Co. and Qwest Corporation, filed July 10, 2006; all Petitions denied October 6, 2006.

WC Docket No. 06-194, Petition for Preemption of the jurisdiction of Arizona Corporation Commission, re arbitration of Interconnection Agreement between Autotel and Citizens Utilities Rural Company, filed October 16, 2006; Petition denied January 12, 2007.

Autotel has raised the same issue in the current petition as in all of these previous petitions, i.e. failure of the state commission to respond to Autotel's petitions for arbitration and render final determinations pursuant to section 252 of the Communications Act of 1934, added by the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, 47 U.S.C § 252(e)(5) ("the Act"). The FCC denied all of Autotel's petitions in the previous dockets on the grounds that the state commissions met the Act's requirements, in that they each responded to the petitions and rendered final

decisions by dismissing the petitions. The FCC orders have made virtually identical conclusions: the burden of proof is on the party seeking preemption to show that the state commission has failed to act, Autotel failed to meet that burden, and the state commissions' timely dismissals of Autotel's petitions for arbitration satisfy their obligation to make final determinations and do not constitute failure to act pursuant to section 252 of the Act.

CURRENT PETITION:

The current petition pertains to PUCN's actions in Docket No. 06-09001. On September 1, 2006 Autotel submitted to PUCN a document titled "Section 252 Complaint" (assigned PUCN Docket No. 06-09001) against Central Telephone of Nevada d/b/a Sprint of Nevada ("Sprint") requesting enforcement of an Interconnection Agreement ("IA"). On September 5, 2006 the PUCN's Legal Case Manager sent Autotel a letter administratively rejecting the filing due to deficiencies, i.e. non-compliance with PUCN rules and regulations. The letter also noted that the requested relief had already been granted by the PUCN in Docket No. 05-2022. After issuance of the rejection letter on September 5, PUCN closed Docket No. 06-09001 on September 6, 2006.

On February 18, 2005, in PUCN Docket No. 05-2022, Autotel had filed a complaint against Sprint for enforcement of the parties' IA, alleging that Sprint was refusing to provide the "mid-span meet point interconnection facility" that Autotel had requested. After months of mediation, filing of

testimony and legal arguments and a hearing, PUCN issued its Order on September 6, 2005. In the Order, PUCN found that after repeated attempts by Sprint, PUCN's Staff and PUCN itself, it was still not clear exactly what Autotel was requesting from Sprint and therefore the complaint was premature and not ripe for consideration at that time. PUCN accordingly dismissed Autotel's complaint without prejudice.

On April 11, 2006, Autotel filed a complaint in the U.S. District Court for Nevada, against Sprint, PUCN and the PUCN Commissioners, alleging PUC violation of the Act and of Autotel's property interest and due process rights pursuant to §1983 of the Civil Rights Act by PUCN's dismissal of the Docket No. 05-2022 complaint. On August 4, 2006 the Court granted the defendants' motions to dismiss for lack of subject matter jurisdiction, finding that PUCN's dismissal of Autotel's request (due to lack of sufficient information by Autotel) was not an operational or binding IA determination.¹

On August 20, 2006 Autotel filed an appeal of the federal court decision to the Ninth Circuit Court of Appeals.² With that appeal pending, Autotel nevertheless tried to file with PUCN a defective complaint concerning the very same matter in Docket No. 06-09001.

¹ *Autotel v. Sprint et al.*, U.S. District Court for District of Nevada No. 2:06-cv-0422-RCJ-LRL. This was one of the virtually identical suits Autotel or WRSC filed in federal courts in Nevada, Arizona, Colorado, Oregon and Utah. Autotel did not prevail in any of these actions.

² *Autotel v. Sprint et al.*, Ninth Circuit Court of Appeals No. 06-16565. Also pending before that Court is the nearly identical appeal of the Oregon federal court's parallel dismissal in *Western Radio Services Co. v. Qwest*, Ninth Circuit Court of Appeals No. 05-35796.

Autotel's current preemption petition now alleges that the purported complaint assigned PUCN Docket No. 06-09001 complied with all PUCN requirements and that PUCN did not resolve the issues between the parties. Autotel requests FCC preemption of jurisdiction because PUCN "declined" and "refused" to make a decision regarding what Autotel now calls a microwave mid-span meet-point facility. Autotel fails to state that it never attempted to correct or modify its pleading in any way. PUCN administratively rejected the document due to the filing deficiencies. PUCN never had the opportunity to address the complaint or make any determination on the merits. PUCN acted on the matter in the only appropriate manner – it rejected the defective complaint. PUCN has no more failed to act in Docket No. 06-09001 than it did in its original dismissal of the complaint in Docket No. 05-2022. Disposition by dismissal is action. Not giving Autotel what it wants is not failing to act.

As noted above, all of the FCC orders in response to Autotel's preemption petitions have made the same findings and conclusions. Yet somehow Autotel does not seem to get the message.

In this petition Autotel has made the same arguments on which it has repeatedly failed to prevail in the past. Naturally the same legal arguments and conclusions must be made once again. The analysis remains the same: the burden of proof is on the party seeking preemption to show that the state commission has failed to act; Autotel has failed to meet that burden; and the

PUCN's dismissal of Autotel's defective complaint (which incidentally requests enforcement of the same issues as to the same interconnection agreement previously addressed) satisfies PUCN's obligation to make a final determination and does not constitute failure to act pursuant to section 252 of the Act.

SANCTIONS:

Autotel's filing of this petition is especially disturbing in light of the FCC's explicit admonishment earlier this year to Autotel about the perils of filing frivolous pleadings in violation of 47 C.F.R. Section 152. In the order issued on January 12, 2007, denying Autotel's petition for preemption of the Arizona Corporation Commission's jurisdiction over the same issues, FCC specifically reminded Autotel that the FCC rules prohibit such pleadings that have no good ground of support and are based on arguments that have been specifically rejected by the FCC. (DA 07-69, WC Docket No. 06-194, paragraph 14, citing 11 FCC Rcd 3030, Release #FCC 96-42.)

Sanctions are appropriate in this matter given Autotel's deliberate filing of the petition without proper supporting grounds and using the same legal arguments that the FCC has specifically rejected. Sanctions are even more strongly warranted because of Autotel's filing this baseless petition less than a year after the FCC explicitly warned Autotel in WC Docket No. 06-194 against such filing. Autotel clearly will not stop its abuse of legal process until and unless the FCC or a federal court responds to Autotel's continuing,

deliberately frivolous, vexatious and malicious pleadings with the imposition of sanctions.

CONCLUSION:

While PUCN would be more than happy to have the FCC assert jurisdiction over Autotel, the grounds for preemption based on alleged PUCN inaction are not present in this matter. Autotel has asked the FCC for appropriate action. PUCN respectfully recommends that the appropriate action for the FCC to take is both the dismissal of the petition and the imposition of sanctions against Autotel.

Dated this ____ day of November, 2007.

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